

February 3, 2016

Washington Water Quality Standards – Human Health Toxics Criteria Anticipated Issues from WA Congressman Dan Newhouse

Key Messages

- The EPA moved forward with a federal rule proposal to provide for timely, protective updates to the human health water quality criteria applicable in the state of Washington.
- The best available data demonstrate that fish consumers in Washington, including tribes with treaty-protected rights, consume much more fish than the 6.5 g/day rate used for Washington in the current federal rule. Therefore, to protect fish consumers in Washington from the adverse effects of toxic pollutants, the EPA's proposed rule updates the federal human health criteria applicable to Washington, using the best available science on pollutant toxicity and exposure.
- If the state of Washington submits final human health water quality criteria to EPA for approval under the Clean Water Act before EPA finalizes the federal human health water quality criteria, EPA intends to review and act upon the state's submission in a timely manner and prior to any final action on the federal criteria.
- If the EPA approves human health water quality criteria submitted by the state of Washington, EPA would either not finalize or withdraw the corresponding federal criteria.
- Implementation tools (e.g., variances or compliance schedules) can provide a means of making reasonable progress in improving water quality while protecting the economic viability of state industries and communities.
 - EPA's federal rule proposal does not revise the state of Washington's existing EPA-approved implementation provisions or affect the state's ability to use those tools when implementing the federal criteria.
 - The state can update its implementation tools and include those updates in a future submittal along with final human health criteria.

Background

- On September 14, 2015, the EPA published a proposed rule for public comment that would revise the current federal Clean Water Act human health water quality criteria applicable to waters under the state of Washington's jurisdiction to ensure that the criteria are set at levels that will protect fish consumers in Washington from exposure to toxic pollutants. The public comment period on EPA's proposed rule closed on December 28, 2015. EPA is currently reviewing the comments it received.

- In October 2015, Washington Governor Inslee announced that he had directed the Washington Department of Ecology to revise the state's human health water quality criteria proposal, and to issue it for public comment in 2016. **On February 3rd, Ecology released a new draft rule that updates surface water quality standards to include human health criteria and updated tools to implement the standards; public comment period runs through April 22.**
- WA Congressman Dan Newhouse sent a letter to EPA on October 7, 2015, expressing his concerns regarding the EPA's proposed rule to revise the current federal Clean Water Act human health criteria applicable to waters under the state of Washington's jurisdiction. In particular, Congressman Newhouse raised concerns that EPA's actions would limit the state of Washington's ability to propose its own human health criteria and that EPA's proposed criteria would result in unacceptable compliance costs to industry. EPA responded and clarified that it would pause its federal rulemaking process should Washington submit human health water quality criteria before the federal rule is finalized. EPA also explained that its proposal does not revise Washington's existing EPA-approved implementation provisions (e.g., variances or compliance schedule) nor limit the state's ability to revise those existing implementation tools. EPA also explained that the federal proposal does not limit the state's ability to use those tools when implementing the federal criteria.

Washington Water Quality Standards Q&A

Isn't EPA overstepping its Clean Water Act authorities by not allowing the state of Washington to update its own water quality standards?

- The EPA works closely with states and tribes as they update their water quality standards to achieve a mutual goal of state and tribal water quality standards regulations that the EPA can approve as consistent with the Clean Water Act and the EPA's regulations. To that end, the EPA has been working collaboratively with Washington's Department of Ecology for many years on adopting human health criteria for toxics. While it is always EPA's preference for states and tribes to adopt water quality standards that are consistent with the Clean Water Act and the EPA's regulations, if a state or tribe has not been able to finalize approvable water quality standards in a timely manner, EPA will move forward to propose federal water quality standards to ensure that the state or tribe has protective water quality standards in place.